



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JHK:DCL:MMO

*610 Federal Plaza
Central Islip, New York 11722*

December 13, 2021

Honorable Joseph F. Bianco
United States Circuit Judge
United States Court of Appeals for the Second Circuit
Long Island Federal Courthouse
Central Islip, New York 11722

Re: United States v. Kenner and Constantine
No. CR-13-607 (S-2) (JFB)

Dear Judge Bianco:

The government respectfully submits this letter in response to the letter filed by Danske Bank on December 9, 2021 requesting a hearing to be held on January 7, 2022. *See* Docket Entry 1132. As discussed below, the request should be denied.¹

As discussed at the conference held on November 29, 2021, this Office has been working with the Department of Justice in Washington (“the Department”) to obtain approval of the proposed settlement. Since the conference, this Office has had continuing discussions with the Department in an effort to obtain the requisite approval. Due to the complexity of the forfeiture and the proposed settlement agreement, there are multiple levels of approvals that must be obtained. This Office and the Department are aware of, and endeavoring to comply with, the Court’s request to obtain an expeditious decision on the proposed settlement.

As the Court is aware from the November 29th conference, Danske represented that Danske and Silverpeak have not finalized their sale agreement; however, a final sale agreement is a prerequisite term for the proposed settlement. Since the conference, Danske has not represented to the Court or to the government that Danske and Silverpeak have finalized the agreement or provided a reason for the delay. Further, Danske advised the Court that after the settlement agreement is approved, Silverpeak will “move forward with due diligence...scheduled for 60 to 90 days.” Danske complains of the additional time needed to complete the settlement agreement; however, the additional three-month time period is, of course, not attributable to the government.

¹ Danske states in its December 9th letter that at the August 25, 2021 conference the government advised the Court that a potential settlement was reached, and Danske appears to suggest that the months of delay in finalizing the agreement thereafter was on the part of the government. However, Danske neglects to inform the Court that it was not until October 15, 2021 that Danske and Silverpeak approved the terms of the draft settlement agreement. *See id.*

In sum, Danske and Silverpeak have needed several months to finalize the sale agreement, and, similarly, will need several months to conduct due diligence, so the government's need for time to obtain numerous approvals is reasonable considering the time that Danske and Silverpeak have needed and continue to need to finalize the settlement on their end. As such, the government respectfully requests that the Court deny Danske's application for a conference and instead permit the government to file a status letter on January 7, 2022, as the Court ordered at the November 29th conference.

Respectfully submitted,

BREON PEACE
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